



Decision

Matter of: Daekee Global Company, Ltd.

File: B-414899; B-414899.2

Date: October 10, 2017

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Young H. Cho, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging terms of solicitation is dismissed where the protester failed to establish that it is an interested party to challenge the terms of the solicitation in the absence of any competitive prejudice.

DECISION

Daekee Global Company, Ltd. (Daekee), of Busan, South Korea, protests the terms of request for proposals (RFP) No. N6264917R0257, issued by the Department of Navy for ship husbanding services. The protester primarily argues that the evaluation scheme set forth in the solicitation fails to evaluate offerors' technical capabilities or past performance, as the protester asserts is required by Federal Acquisition Regulation (FAR) part 15.

We dismiss the protest because the protester has not established that it is an interested party.

The solicitation was issued on June 16, 2017, under FAR part 15 and sought ship husbanding support services for all commercial and military ports located in the Seventh Fleet area of operations, Region 4, which includes Korea, Japan, Russia (Pacific coast), and Taiwan. RFP¹ at 000001, 000016, 000079.² The solicitation contemplated

¹ The solicitation was amended six times. All citations to the solicitation are to the final version as amended on July 6, 2017.

awarding multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts with a 1-year period of performance. Id. at 000069, 000130. The solicitation advised that the contract value for all task orders issued against the contract was not to exceed \$11,000,000, with a minimum guarantee of \$3,500 per awardee. Id. at 000007, 000008.

The solicitation advised that maritime husbanding support is to be provided from a standard list of supplies/services at a fixed price through the issuance of task orders. Id., amend. 2, at 000833; see also RFP, amend. 6, at 000908-000909 (H-2 Ordering Procedures). In this regard, the solicitation's performance work statement (PWS) identified the required services³ by contract line item number (CLIN), subcontract line item number (SUBCLIN) and/or exhibit line item number (ELIN) and provided detailed descriptions of the scope of the required services by ELIN.⁴ See id., amend. 2, at 000838-000883. The solicitation also described the standard process for a ship's port visit and the definition of the contractor's role as a husbanding services provider. Id. at 000835-000837.

The solicitation also required that the contractor provide quality goods and services at requested delivery times to ships making port visits, and ensure that all ordered supplies and services conform to the general requirements of the contract pursuant to the PWS. Id. at 000833-000834. In this regard, the PWS stated that it does not specify how the contractor is to perform but instead provides measurable performance standards, which are established in the quality assurance surveillance plan to monitor contract performance during each ship's visit. Id. at 000834. The PWS also stated that all services were to be performed by individuals fully qualified and licensed in their relevant area and that the contractor was to obtain any necessary insurance including admiralty insurance as required, as well as licenses and permits, and to comply with any applicable laws, codes, and regulations, in connection with the performance of all work under this contract. Id. at 000834-000835.

(...continued)

² The agency used a Bates numbering system in preparing the agency report. The decision uses the Bates numbers assigned by the agency for its citations.

³ These services included trash removal; fleet landing; brow, crane, forklift, and manlift services; ship movement services; water ferry/taxi services; general charter and hire items; collection, holding, and transfer and greywater; water; general utility services; force protection; force protection barriers; force protection personnel and equipment; force protection supplies; telephone services and communication equipment; land transportation (personnel) services; provisions; and fuel. See RFP, amend. 2, at 000838-000883.

⁴ The solicitation required offerors to complete ELIN pricing spreadsheets for each port identified in the solicitation as well as for ports that were not specifically named and countries for which no specific ports were identified. See RFP, amend. 2, at 000833; see also id., amend. 4, at 000902-000904; see also id., amend. 1, Pricing Sheets, at 000608-000831.

The solicitation, as amended, contemplated making multiple awards to the lowest-priced offerors whose proposals do not take exception to any terms of the solicitation. RFP, amend. 3, at 000899. In this regard, the solicitation stated that “[a] proposal that does not take exception to any term of the solicitation, and, therefore, clearly meets the requirements of the solicitation, will be eligible for award.” Id. Relevant here, section L of the RFP advised offerors that to be considered for award, offerors needed to submit by the solicitation closing a signed proposal (with acknowledgment of all amendments) that shows the offeror is not taking exception to any solicitation term; includes the certifications and representations contained in the solicitation; and includes unit prices and total prices for all line items and sub line items in the solicitation. Id. at 000896. The solicitation specifically required a signed letter stating that the offeror is not taking exception to any terms and conditions; has all the required approvals and licenses to operate within Region 4 (includes all countries listed within the region) for which it is submitting a proposal; and confirm that its computer systems will conform to the cyber security requirements for husbanding service providers listed in the PWS immediately after receiving award of the contract. Id.

On July 6, 2017, prior to the closing time for receipt of proposals, Daekee filed this protest.⁵

On July 13, 2017, prior to the agency report due date, the agency requested our Office dismiss the protest because, inter alia, the protester has not been prejudiced by the terms of the solicitation. The agency argues in this regard that Daekee submitted an offer that has been evaluated and the agency intends to award a contract to Daekee; i.e., Daekee cannot demonstrate that the terms of the solicitation affected Daekee’s ability to compete or placed Daekee at a competitive disadvantage. See Agency Request for Dismissal at 2-4.

In responding to the agency’s request for dismissal, the protester clearly states that “Daekee Global does not oppose the Navy’s [r]equest as a matter of law;” “and appreciates that the Navy has selected [Daekee] as an awardee.” Protester’s Response to Request for Dismissal at 1, 2. However, the protester expressed its concern that if the protest were dismissed, then “none of the troubling issues Daekee Global put forward in the protest will have been addressed or corrected.” Id. at 1.

Under the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556, only an “interested party” may protest a federal procurement. DNC Parks & Resorts at Yosemite, Inc., B-410998, Apr. 14, 2015, 2015 CPD ¶ 127

⁵ While Daekee raised a number of arguments challenging the Navy’s evaluation scheme, in light of our decision dismissing the protest, nothing in this decision should be construed as expressing or reflecting this Office’s opinion regarding the propriety of the evaluation scheme set forth in the challenged solicitation.

at 12. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a protester is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Id.

Here, we find that Daekee is not an interested party to challenge the terms of the solicitation because we discern no competitive prejudice to Daekee. Competitive prejudice is a required element of every viable protest, and where none is shown, we will not sustain a protest. WKF Friedman Enters., B-411208, June 16, 2015, 2015 CPD ¶ 183 at 3; CWTSatoTravel, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12. In the context of a protest challenging the terms of a solicitation, competitive prejudice occurs where the challenged terms place the protester at a competitive disadvantage or otherwise affect the protester's ability to compete. Global Solutions Network, Inc., B-298682, Nov. 27, 2006, 2006 CPD ¶ 179 at 3; Pond Sec. Group Italia JV--Costs, B-400149.2, Mar. 19, 2009, 2009 CPD ¶ 61 at 4; Crane & Co., Inc., B-297398, Jan. 18, 2006, 2006 CPD ¶ 22 at 9.

Here, the agency has represented that Daekee submitted an offer that has been evaluated, and that the agency intends to award a contract to Daekee, once the protest has been resolved and the stay of award has been lifted. Request for Dismissal at 5. The protester nonetheless maintains that the fact that it has been selected for award of a contract does not resolve the issue of competitive prejudice because "its deep investments in compliance are rendered useless, and the company faces significant reputational risk if, as before, the Navy's weak controls allow corruption again⁶ to flood this high-profile market." Protest at 20. Further, Daekee asserts that it would be stripped of its competitive advantage over other offerors who have not made Daekee's investment in quality assurance and internal controls. Id.; see also Comments at 29. We do not find that a protest concerning this type of harm falls within the scope of our jurisdiction under CICA, which requires us to ensure that the statutory requirements for full and open competition are met--not to protect any interest a protester may have in more restrictive specifications. See DNC Parks & Resorts at Yosemite, Inc., supra, at 13; Virginia Elec. & Power Co.; Baltimore Gas & Elec. Co., B-285209, B-285209.2, Aug. 2, 2000, 2000 CPD ¶ 134 at 7-8.

Daekee also states that it "has not won anything except for an opportunity to compete in price competitions for Region 4 task orders against husbanding services providers that have never been evaluated for their ability to successfully perform, much less

⁶ The protester refers to a bribery and corruption scandal involving Glenn Defense Marine Asia (GDMA). See Protest at 2, 6-8; id., exh. C, Naval Audit Service, Audit Report, Navy Ship Husbanding and Port Services Contracts (Sept. 30, 2014).

qualitatively compared to the value Daekee provides in the form of reduced performance and compliance risk.” Comments at 30. IDIQ contract holders are guaranteed a minimum quantity of orders and a fair opportunity to compete for future task orders. National Air Cargo Grp., Inc., B-411830.2, Mar. 9, 2016, 2016 CPD ¶ 85 at 4. Under this solicitation, the agency is not legally obligated beyond the provision of the guaranteed minimum of \$3,500 and a fair opportunity to be considered for future task orders.

Finally, the protester argues in a variety of ways that the agency has provided no indication of how it might provide Daekee a fair opportunity to compete at the task order level, and that the acquisition strategy here “diminishes Daekee’s ability to compete against commercial husbanding companies that can offer lower prices precisely because they have not made Daekee’s investment in the quality and compliance controls the [Navy] needs.” Comments at 30-31. We find Daekee’s arguments with regard to its interest in a fair opportunity to be considered for future task orders as well as its potential competitive disadvantage in those task order competitions to be challenges to future task orders which are speculative and premature at this time. Any challenge to a future task order is not ripe for review until, at a minimum, the agency has issued a solicitation for the task order.

The protest is dismissed.

Susan A. Poling
General Counsel